IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.6.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.545 of 2006

Chellammal .. Petitioner/Tenant

vs.

Krishnaveni Ammal .. Respondent/Landlord

Revision Petition filed U/s 25 of T.N Buildings (Lease and Rent Control) Act as amended by Act 23/73 and 1/80 against the judgment dated 31.1.2005 in R.C.A.No.5/2001, on the file of the Sub-Judge, Ponneri, against the order dated 26.6.2001 passed in RCOP.No.18/94 on the file of the Court of the District Munsif, Ponneri.

For Petitioner : M/s.Paul & Paul

For Respondent : Mr.S.Giritharan

ORDER:

The unsuccessful tenant who lost her case before the authorities below is the revision petitioner herein.

2. The respondent herein filed RCOP No.18/1994 under Sec.10(3)(a)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act') for evicting the revision petitioner/tenant from the petition property. The respondent/landlady pleaded that she is in need of the petition mentioned property for her own use and occupation and once and for all she wanted to settle at the property. She further stated in the RCOP that she is not owning any other house excepting the petition mentioned property. The revision petitioner herein as tenant resisted the RCOP by contending that the requirement of the landlady is not bona fide and the same has been filed to evict her as she did not pay heed to the landlady's demand of Rs.400/- per month as rent. The learned Rent Controller by order dated 26.6.2001 allowed the RCOP against which the revision petitioner filed an appeal in RCA No.5/2001 and the learned Appellate Authority by order dated 31.1.2005 dismissed the appeal and confirmed the order of the Rent Controller. Challenging the order dated 31.1.05, the above Civil Revision Petition has been filed by the tenant.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. Heard the learned counsel appearing on either side. I have also perused the documents filed in support of their submissions.

4. Learned counsel for the petitioner contended that the respondent/landlady did not enter into the witness box and deposed about her bona fide requirement of the petition property. Instead, a power of attorney deposed as P.W.1 on behalf of the respondent/landlady who is not competent to speak about the genuine requirement of the landlady. The learned counsel further submitted that the power of attorney was marked as Ex.P1 before the Rent Controller and in that power of attorney dated 20.2.1995, power was also given to the agent to sell the petition property also, which clearly indicates that there is no bona fide in the requirement of the landlady. The learned counsel further added that the respondent's notices dated 1.4.94 (Ex.P2) and 2.5.94 (Ex.P3) as well as the reply notice dated 31.5.94 (Ex.P5) did not mention anything about the requirement of the premises for owner's occupation but only demanded enhancement in rent which clearly proves that the RCOP is only an after-thought. Learned counsel finally concluded his argument by submitting that the Appellate Authority has not exercised its jurisdiction properly and failed to consider the relevant facts in the proper perspective and mechanically confirmed the order of the Rent Controller.

5. In support of his submissions, learned counsel for the petitioner has relied on the following judgments:-
(1) (2005) 2 SCC 217 (Janki Vashdeo Bhojwani v. Indusind Bank Ltd.); and (2) (2005) 2 SCC 476 (Adil. Jamshed Frenchman v. Sardar Dastur Schools Trust & others).

6. Per contra, learned counsel for the respondent/landlady submitted that failure on the part of the landlady to go into the box cannot be taken as a ground for not upholding the claim of bona fide requirement of the petition premises. He further submitted that the power of attorney is competent to give evidence on behalf of the landlady and granting power to sell the petition property will not defeat her claim for filing the RCOP under Sec.10(3)(a)(i) of the Act 18/1960. Insofar as the non-mentioning of the bona fide requirement in the notices sent by the respondent/landlady, the learned counsel submitted that non-mentioning the requirement in the earlier notices will not defeat the claim of the landlady and both the courts below have upheld the bona fide of the landlady's requirement on the basis of the evidence let in and that need not be upset by this court in its revisional jurisdiction under Sec.25 of the Act.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. Learned counsel for the respondent has relied on the following judgments in support of his submissions:-
(1) 1979-II M.L.J. 355 (Jameema Beevi v. Easwarlal Patel); (2) 1983-II M.L.J. 354 (Palaniappa Chettiar v. Simen George) and 1999-III M.L.J. 303 (Jagatrakshagan v. Futaree Bai).

8. The only question involved in this revision petition is whether the respondent/landlady has proved her bona fides in requiring the petition premises for her own use and occupation.

9. It is not in dispute that the respondent/landlady executed a power of attorney on 20.2.1995 which was marked as Ex.P1. In Ex.P1, apart from entrusting other duties and activities to be carried out by the agent, power was also given to sell the petition property. In such circumstances, a genuine doubt arises as to the bona fides of the landlady's claim that she needed the property for her own use and occupation. But both the authorities below have overlooked this aspect and held that by merely granting power to sell the property would not disentitle the landlady from filing the petition for her own use and occupation. The oral evidence was also let in by the very same power agent who has also not explained as to why power was also given for selling the property in question. Before executing the power of attorney on 20.2.95 notices were sent by the respondent/landlady to the revision petitioner herein/tenant, which were marked as Exs.P2 and P3. In these two documents also nothing has been mentioned about the landlady's requirement of the petition property for her own use and occupation. Similarly, in the reply notice dated 31.5.94 marked as Ex.P5, there was no mention about the landlady's requirement of the petition property. Insofar as the non-mentioning of the landlady's requirement in the above exhibits are concerned, both the authorities below have only held that no notice informing about the landlady's requirement of the petition property for her own use is necessary before filing the eviction petition.

10. I am unable to accept the findings of both the authorities below in this regard. If only the landlady bonafidely required the petition premises for her own use and occupation, she would have definitely mentioned about her requirement in the notices sent to her tenant prior to the filing of the RCOP. But the respondent/landlady has filed the RCOP only after executing the power of attorney on 20.2.95 giving power even to sell the same property. Apart from that it is the power of attorney who as P.W.1 has deposed before the Rent Controller on behalf of the landlady. In my view it is not proper and not legally sustainable too. The power of attorney can depose in the place of principal in respect of the acts done by him only in exercise of powers granted by the instrument. The power of attorney cannot depose for principal in

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

respect of matters of which only the principal can have personal knowledge and in respect of which principal is liable to be cross-examined. If the principal is unable to appear in court, commission for recording her evidence may have to be issued. P.W.1, the power of attorney in his cross-examination pleaded ignorance about Exs.P2,P3 and P5 and he is also not competent to talk about these exhibits.

11. If proper evaluation of the evidence let in before the Rent Controller is undertaken the only conclusion that can be arrived at is that there is no bona fide on the part of the landlady in the requirement of the petition premises for her own use and occupation. But the Appellate Authority which is a final court for facts did not appreciate and evaluate the evidence in the proper perspective and mechanically confirmed the order of the Rent Controller. The Appellate Authority did not apply his independent judicial mind which is expected of him.

12. In (2005) 2 SCC 217 cited supra, the Hon'ble Supreme Court has held as follows:-

> "10. The second fallacy of the order of the Tribunal was allowing Mr.V.R.Bhojwanai (power-of-attorney holder), husband of Appellant 2 Ms. Mohini Laxmikant Bhojwani, to appear in the witness box on behalf of the appellants. It may be noted that the appellants were shying away from gracing the box. The respondent Bank vehemently objected to allowing the holder of power of attorney of the appellants to appear in the witness box on behalf of the appellants. This Court had clarified that the burden of proving that the appellants have a share in the property was on the appellants and it was incumbent on the appellants to have graced the box and discharged the burden that they have a share in the property, the extent of share and the independent source of income from which they had contributed towards the purchase of the property. The entire context of the order dated 10.2.2004 was forwarded to the Tribunal for the purpose. It is unfortunate that the Tribunal has framed its own issues not consistent with the directions and recorded a finding contrary to the directions as aforesaid."
>
> "11. Dr.Singhvi, learned Senior Counsel appearing for the respondent Bank vehemently contended that the appellants did not grace the box to lead evidence but authorised

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Mr.V.R.Bhojwani (power-of-attorney holder) to appear on behalf of the appellants. Learned counsel contended that Mr.Bhojwani was not an independent person to the litigation but was a judgment-debtor in the suit and a co-owner of the property and there was a clash of interest between the husband and wife and as such he could not have been permitted to grace the box on behalf of the appellant. He further contended that under Order 3 Rules 1 and 2 CPC, a power-of-attorney holder can appear, apply or act in any court but such act cannot be extended to depose in the witness box. He further submitted that in the present case a power-of-attorney holder is not acting as a witness on behalf of the principal but he is representing the principal himself. He further contended that deposing in a witness; box and being cross-examined is a personal act and cannot be done through an agent/power-of-attorney holder.:

"13. Order 3 Rules 1 ;and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

"18. The aforesaid judgment was quoted with approval in the case of Ram Prasad v. Hari Narain, AIR 1998 Raj 185 : (1998) 3 Cur CC 183. It was held that the word "acts" used in Rule 2 of Order 3 CPC does not include the act of power-of-attorney holder to appear as a witness on behalf of a party. Power-of-attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued
> under the relevant provisions of CPC."
>
> "21. We hold that the view taken by the Rajasthan High Court in the case of Shambhu Dutt Shastri, (1986) 2 WLN 713 (Raj) followed and reiterated in the case of Ram Prasad, AIR 1998 Raj 185 : (1998) 3 Cur CC 183 is the correct view. The view taken in the case of Floriano Armando Luis, (2002)2 Bom CR 754 cannot be said to have laid down a correct law and is accordingly overruled."

13. From the above judgment, it is very clear that the power-of-attorney holder cannot speak for the principal in respect of matters of which only the principal has personal knowledge and in respect of which principal is liable to be cross-examined. If the law laid down by the Hon'ble Supreme Court in the above judgment is applied to the facts of this case in hand, it will prove that the landlady has not discharged her duty in proving her bona fides in requiring the petition premises for her own use and occupation.

14. In (2005) 2 SCC 476 cited supra, the Hon'ble Supreme Court held as follows:-

> "8. The decree of the trial court is based on the landlords' bona fide requirement of the accommodation. In appeal, the question before the court for adjudication was whether the trial court was justified in passing the decree in favour of the landlords on the ground of bona fide need and the tenants obviously were within their rights to show that the need of the landlords was not genuine. The evidence produced in that direction would be relevant for the purpose of adjudicating the question of need of the landlords. In Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222 this Court has held that a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. In Deena Nath v. Pooran Lal, (2001) 5 SCC 705 this Court reiterated that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in prasenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire."

"9. It cannot be denied that the documents sought to be produced by the tenants are; material and if substantiated, would have a material effect on the case of the landlords of their bona fide need of the suit premises. If, in fact, for selling or use by them of the property, the need cannot be said to be genuine. Similarly, a change in the construction plan may show that the alleged need of the landlord for the construction may not be genuine. The third document proposes to demolish the case of availability of the funds for construction with the landlord. Two of the documents came into existence after the passing of the decree by the trial court. Similarly, the correspondence entered into by the landlord with a third party could not have been within the knowledge of the tenant and therefore, the tenant's statement that the documents could not have been produced before the trial court, in spite of the exercise of due diligence was highly probable . In such circumstances, the High Court was not justified in interfering with the discretion exercised by the first appellate court permitting additional evidence."

WEB COPY

15. In the above case, the Hon'ble Supreme Court held that bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlady claiming to occupy the premises for herself. The bona fide requirement has to be distinguished from a mere whim or fanciful desire. The Hon'ble Supreme Court further held that when the landlord entered into negotiations for selling the property, the need cannot be said to be genuine.

https://hcservices.ecourts.gov.in/hcservices/

16. In the present case, the respondent/landlady has filed the RCOP on the ground of bona fide requirement for her own use and occupation after executing the power-of-attorney, which includes the power to sell the very same property. In such circumstances, I hold that the need of the landlady is not genuine and bona fide.

17. In 1979-II M.L.J. 355 cited supra, this court has held that a petition for eviction by the power-of-attorney holder is maintainable and further held that the power-of-attorney can also give undertaking under Sec.14(1)(b) of the Act if such power is granted in the instrument.

18. In the case on hand, the RCOP was not filed by the power-of-attorney and it was filed by the landlady. But the power-of-attorney deposed as P.W.1 on behalf of the landlady.

19. In 1983-II M.L.J. 354 cited supra, this court held as follows:-

> "6. Even at the outset it has to be held that the reasoning offered by the learned Appellate Authority for reversing the finding of the learned Rent Controller is not sound. The learned Appellate Authority has observed in paragraph 8 of the judgment as follows:-
>
> "The landlord was not examined; only his agent was examined as P.W.1. In the petition it is specifically stated that the landlord is an aged person and he is not maintaining good health for the last few years. The landlord is now residing in Kanapet and is often visiting Madras for medical advice and expert treatment and he is directed to come down to Madras and settle for regular medical advice and treatment. The nature of sickness or ailment of the landlord has not been disclosed in the petition. P.W.1 merely says that whenever the landlord comes to Madras, he used to stay in hostels or in his friend's house and the landlord has no other house of his own. In the cross-examination P.W.1 has stated that he is related to the landlord and the landlord is residing at Kanapet with his family and the landlord came to Madras 15 days ago for medical treatment and for the past five years the landlord is not keeping good health. The landlord used to get giddiness often and P.W.1 does not know the nature of ailment or sickness. In Exhibit R.1 the first notice in 1969, there is absolutely no mention about the illness of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

landlord. It should be remembered that the landlord is residing in Pudukottai district with his family. If the landlord requires the petition premises for his own use and occupation, namely, for staying in Madras, for getting expert medical treatment them he ought to have entered the witness box and proved to the satisfaction of the Rent Controller, that he is a sick man requiring treatment at Madras. P.W.1 has merely stated that the landlord used to come to Madras now and then. There is no admission in the evidence of P.W.1, that the landlord has to come to Madras for medical treatment . If the landlord has to come to Madras for a stay for two or three months, then for that purpose it cannot be said that he requires the entire premises for his own use and occupation. The entire documents and oral evidence show ill-feelings arose between the parties and the tenant started issuing cheque for the rents in the name of the firm and the landlord refused to receive the same and after that the notice terminating the tenancy was issued followed by the eviction petition. It is common knowledge that the landlord wants to evict the tenants if they refuse to pay higher rent and after evicting the tenants, let out the premises for higher rent. It is, therefore, absolutely necessary that the landlord should prove that he requires the premises bona fide for his own use and occupation. The landlord has miserably failed to prove that the premises is required by him for his medical treatment. Therefore, I find that the petition-premises is not required bona fide by the landlord for his own use and occupation. The point is answered accordingly."

The main thing that had weighed with the learned Appellate Authority to revise the finding of the Rent Controller was that if really the landlord used to come to Madras very often to get expert medical treatment, he ought to have gone into the box to prove the same. The above observation of the learned Appellate Authority is wrong. The learned Rent Controller was satisfied with the evidence of P.W.1, who was a competent witness. Nothing was brought out in his cross-examination to discredit his evidence. It is not necessary that the landlord alone should go into the box and depose about the bona fide requirement. Even

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> his own agent or anybody on his behalf whose evidence is cogent, convincing and trustworthy can be taken on its face value either for upholding or for rejecting the case of the landlord. Under the circumstances, the failure on the part of the landlord to go into the box and examine himself cannot be taken as a ground for not upholding his claim for bona fide requirement of the demised premises. Apart from the same, the other reasons given by the learned Appellate Authority to reverse the order of the learned Rent Controller are not at all convincing and satisfactory. Therefore, this Court has to set aside the order of the Appellate Authority and restore that of the Rent Controller."

20. In the above judgment no doubt this court has held that an agent whose evidence is cogent, convincing and trustworthy can depose on behalf of the landlord. But, in view of the Hon'ble Supreme Court judgment in Janki Vashdeo Bhojwani case, cited supra, I am not inclined to follow the above judgment.

21. In 1999 (3) MLJ 303 cited ;supra, this court has held as follows:-

> "39. Much was said about non-examination of the wife or daughter of the landlord. But, this court in Munuswamy v. S.S.Nathan, 1996 T.L.N.J. 201, would hold that the non-examination of the person for whom it is required cannot be the basis to hold that it is not a bona fide requirement. It all depends upon the credit-worthiness of the evidence let in by the witness before the court, who is seeking for the eviction for requirement of the personal use.
>
> 40. In the instant case, once the evidence of P.W.1, the landlord is believed and relied upon, the mere non-examination of wife and daughter would not affect the credibility of the evidence let in. Unless there is a reason to disbelieve the evidence of P.W.1 the landlord, the court need need not seek corroboration through the other witnesses concerned."

22. In the above case, the landlord entered into the witness box and deposed that he required the building for the purposes of setting up his wife's business. In that context only this court held that the non-examination of the wife cannot be the basis to

https://hcservices.ecourts.gov.in/hcservices/

hold that the need is not bona fide. The facts in the above case are different and are distinguishable from the one on hand.

23. It is true that normally this court will not interfere with the concurrent findings based on evidence while exercising its jurisdiction under Sec.25 of the Act. But when both the authorities below overlooked the factual material and transgressed the governing principles relating to the bona fide requirement, this court cannot shut its eyes by shirking its jurisdiction of revision to cancel such improper and illegal decisions. When both the authorities below have ignored the provisions of law and have been mechanical in passing the eviction order, the same has to be necessarily rectified by this court in its revisional jurisdiction.

24. In the result, the Civil Revision Petition is allowed and consequently the orders of the authorities below are set aside. No costs. C.M.P.No.4199/2006 is closed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Sub-Judge,
(Rent Control Appellate Authority)
Ponneri.

2.The District Munsif,
(Rent Controller) Ponneri.

+ 1 cc to M/s. Paul And Paul, Advocates (SR No.25924

+ 1 cc to Mr.S. Giritharan, Advocate SR No.25570

NG(CO)
SR/3.7.2006

Pre-delivery order,
C.R.P.(NPD)545/06.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/